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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT SEATTLE

11 ABEL GHIRMAI,

12 Plaintiff,

13 v.

14 NORTHWEST AIRLINES, INC., a Minnesota  
corporation,

15 Defendant.

CASE NO. C02-1839RSM

ORDER ON MOTION TO QUASH

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17 This matter is before the Court for consideration of plaintiff's motion to quash two subpoenas  
18 duces tecum (Dkt. # 147). The subpoenas, which were issued January 12, 2009, are directed to two  
19 employers for whom plaintiff worked after his termination by defendant. They seek copies of "any and  
20 all documents relating to the hiring, employment and/or termination of employment of [plaintiff],"  
21 including, among other specified documents, applications, interview notes, background checks, personnel  
22 files, performance evaluations, incident reports, sick leave records, medical and health records, and other  
23 information. Dkt. # 148, Exhibits A and B. Plaintiff seeks to quash these subpoenas on the grounds that  
24 (a) they are untimely under the Court's scheduling order and (b) the information sought from other  
25 employers is irrelevant, inadmissible, and not reasonably calculated to yield information on plaintiff's  
26 claim of emotional distress. Defendant has opposed the motion. For the reasons set forth below, the  
27 motion to quash shall be granted.

28 The Court's Order Setting Trial Date and Related Dates (Dkt. # 119) set a discovery cut-off date

1 of December 29, 2008. That date has been extended upon the stipulation of the partes for certain limited  
2 purposes related to expert discovery. Dkt. ## 124, 138. The date was also extended by the Court for a  
3 limited purpose during a telephonic motion held on December 23, 2008. Dkt. # 140. The telephonic  
4 conference was held at defendant's urgent request, and was specifically directed to the deposition of Mr.  
5 Killian which was noted by plaintiff for December 29, 2008 in Minnesota. Defendant asserted that the  
6 timing of this deposition was very bad, given that the date lay between two major holidays, and also that  
7 inclement weather in the Seattle area and in the Midwest was causing severe delays in air travel. The  
8 Court struck the deposition as requested by defendant, but extended the discovery date to January 23,  
9 2009 to allow plaintiff to re-note the deposition later if appropriate. Although the Court's minute entry  
10 does not explicitly so state,<sup>1</sup> the extension of the discovery deadline was necessarily limited to the sole  
11 issue before the Court during that conference, namely the deposition of Mr. Killian. The discovery period  
12 was extended for no other purpose. The subpoenas duces tecum served on or after January 12, 2009 are  
13 therefore untimely.

14 Defendant also contends that even if the discovery cut-off date has passed, plaintiff has an  
15 obligation to supplement his responses to a Request for Production No. 8, served on December 27, 2002.  
16 However, such supplementation should be asked of plaintiff himself, not of third parties. Moreover, the  
17 scope of the subpoenas served here extends far beyond what would be required of plaintiff in the way of  
18 supplementation to Request for Production No. 8.

19 Finally, defendant argues that the subpoenas are not untimely because plaintiff did not produce a  
20 supplemental expert of Dr. Andrea Jacobson, plaintiff's expert on his emotional state, until December 31,  
21 2008. Defendant asserts that it did not learn until then that certain bases for plaintiff's emotional distress  
22 claims arise from his subsequent employment history. The Court notes that the parties stipulated to  
23 extend expert discovery to December 31, 2008 "for the limited purpose of disclosing Dr. Jacobson and  
24 her supplement to Dr. Root's report. . . ." Dkt. # 138, p. 2. The parties further stipulated to allow an

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26 <sup>1</sup>This telephonic conference was, as noted, held at defendant's urgent request, on the one date  
27 between December 18, 2008 and December 29, 2008, that the Court was open, due to holiday and  
28 extreme weather closures. The Court was operating on December 23, 2008 with limited staff, and the  
telephonic conference was held without a court reporter present. The Minute Entry summarizing the  
Court's ruling was placed on the docket by the Court's one staff member present in the courthouse on  
that day.

1 extension for the purpose of deposing Dr. Jacobson and plaintiff. *Id.* In so stipulating, both parties  
2 represented to the Court that “moving these deadlines two weeks will not affect any other deadline set by  
3 the Court. . . .” By agreeing to this stipulation and the limitations therein, defendant bore the risk that  
4 matters arising in Dr. Jacobson’s supplemental report could not be explored through further discovery.

5 Plaintiff’s motion to quash the two subpoenas duces tecum is accordingly GRANTED.

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7 DATED this 10 Day of February 2009.

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RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE